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Walker + Jensen*

U. S. DISTRICT COURT
DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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|----------------------------------|---|---------------------------|
| GARY H., <u>et al.</u> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil No. 77-1039-BU |
| v. |) | |
| |) | FINAL DECREE AND JUDGMENT |
| LEO T. HEGSTROM, <u>et al.</u> , |) | |
| |) | (Isolation and Detention |
| Defendants. |) | |

Based upon the pleadings and all prior proceedings had herein regarding defendants' use of Detention Special Services-I (hereinafter D-I) and the conditions of confinement therein, and upon the findings of fact and conclusions of law contained in the Opinion of the Court entered on December 17, 1984, and the determination of the Court that there is no just reason for delay and that a final decree and judgment should be entered as to plaintiffs' claims regarding the isolation and detention unit,

It is hereby ORDERED, ADJUDGED AND DECREED that:

Defendants' use of D-I and the conditions of confinement therein violate plaintiffs' right to due process of law, to

1 be free from cruel and unusual punishment, and to treatment
2 under the Eighth and Fourteenth Amendments to the United States
3 Constitution; and

4 Defendants, their successors, officers, agents, servants,
5 employees and all other persons acting in concert or participation
6 with any of them, are as of the date of this order permanently
7 enjoined and restrained from placing any student in D-I or any
8 other form of isolation (hereinafter D-I) without complying
9 with the following:

10 1. CONFINEMENT IN D-I.

11 a. Purpose of Confinement. No student shall be placed
12 in D-I unless that student has engaged in conduct that creates
13 an imminent danger of physical harm to himself or to others.

14 b. Use of Less Restrictive Measures. No student shall
15 be placed in D-I when other, less restrictive measures are avail-
16 able to deal with the student's conduct.

17 c. Length of Confinement.

18 i. No student shall be placed in D-I for any longer
19 than is necessary to calm him down to the point where he
20 can be returned to his cottage without posing an imminent
21 danger of physical harm to himself or others.

22 ii. No student shall be placed in D-I for longer
23 than 24 hours, except in the most extreme circumstances,
24 in which the student remains out of control in spite of
25 appropriate efforts by a qualified mental health professional
26 (psychiatrist, psychologist, or clinical social worker)

1 (hereinafter qualified mental health professional). Approp-
2 priate efforts by a qualified mental health professional
3 shall be attempted during the first 24 hours.

4 iii. No student shall be placed in D-I for longer
5 than 24 hours until such time as defendants develop and
6 the court approves a suitable plan and schedule for its
7 implementation to provide the procedural safeguards specified
8 in paragraph (1)(d) before or during the first 24 hours.

9 iv. Students confined in D-I (hereinafter students)
10 shall be inspected visually at least every 15 minutes while
11 they are in their cells to determine if they are still
12 out of control or are in need of services or intervention,
13 and defendants shall maintain a written log of such inspec-
14 tion.

15 d. Procedural Safeguards.

16 i. No student shall be placed in D-I unless approval
17 is given verbally within one hour of the placement by the
18 superintendent, officer of the day, or a qualified mental
19 health professional. This verbal approval shall be followed
20 with written approval specifying the reason placement in
21 D-I was necessary the the conduct of the student that led
22 to it, by the person giving approval, by the end of that
23 person's shift.

24 ii. No student shall be placed in D-I for longer
25 than 24 hours without providing adequate procedural safe-
26 guards, including the following: a hearing before an impar-

1 tial hearings officer at which the student has the right
2 to be present during all stages of the hearing with the
3 exception of the hearings officer's deliberations; the
4 right to introduce evidence and/or witnesses on his behalf;
5 the right to be represented by an advocate of his choice,
6 and the right to have an advocate appointed by the hearings
7 officer if the hearings officer determines that the student
8 requires the assistance of such an advocate, unless expressly
9 waived by the student; the right to confront and
10 cross-examine accusers or adverse witnesses, unless the
11 witnesses are other students whom the hearings officer
12 finds would be intimidated; written findings and a record
13 prepared to permit review; and an adequate review procedure.
14 The hearing shall be conducted before or during the first
15 24 hours of placement in D-1.

16 2. ENVIRONMENT IN D-I.

17 a. The D-I Cell.

18 i. Defendants shall maintain D-I cells in a clean
19 and sanitary condition free of insects and lice. Mattresses
20 and pillows in good condition, covered with fire-retardant
21 and water-resistant material, shall be provided. Mattresses,
22 pillows, bed frames, toilets and sinks shall be cleaned
23 with disinfectant between students. Floors and walls of
24 cells shall be washed as needed, but at least monthly. When
25 occupied, cells shall be cleaned daily. Bathroom areas
26 shall be cleaned and showers, urinals, and toilets disinfect-

1 ted daily. Students shall not be required to perform any
2 of the above tasks unless the student has caused the condi-
3 tion. However, no condition creating a health hazard shall
4 be allowed to remain because of the refusal or inability
5 of the student to perform any of the above tasks. Defendants
6 shall take all necessary measures consistent with students'
7 health and safety to eliminate insect and lice infestation
8 in D-I, including an inspection by a licensed pest control
9 professional at least every three months.

10 ii. Defendants shall provide heating and ventilation
11 systems in each D-I cell that provide fresh air, and maintain
12 farenheit temperatures as follows: not less than 65 to
13 68 degrees during the day and 60 to 63 degrees during the
14 night in winter, and not more than 78 to 80 degrees in
15 summer. The ventilation system shall provide at least
16 10 cubic feet of fresh or purified air per minute. Windows
17 in the doors of D-I cells shall not be blocked with pillows
18 or other materials for any reason. However, if the student
19 in the cell throws material through the window, defendants
20 may temporarily employ a plexiglass cover hinged at the
21 top and kept open at least six inches at the bottom, or
22 a stand kept parallel to but at least six inches away from
23 the window, in no case longer than 15 minutes, and in no
24 case in such a way as to prevent a complete change of air
25 in the cell at least every 11 minutes.

26 iii. Defendants shall provide adequate lighting in

1 each cell, including a central light fixture providing
2 adequate ambient lighting for general purpose use and suffi-
3 cient for staff supervision, and task sufficient lighting
4 that provides at least 25 foot candles of light at desk
5 level.

6 b. Supplies and Clothing.

7 i. Each D-I cell shall be furnished with a mattress
8 measuring four inches thick, 25 inches wide, and 75 inches
9 long.

10 ii. Defendants shall supply freshly washed sheets
11 and pillowcases and a clean blanket for each new student.
12 When cells are occupied, the bedding shall be changed as
13 needed. Clean towels shall be provided daily. Students
14 requesting additional blankets shall be provided with them.

15 iii. Upon entry into D-I, each student shall be provided
16 with any of the following personal hygiene items that have
17 not been brought to D-I with the student: toothbrush,
18 toothpaste, deodorant, brush or comb, soap, and toilet
19 paper. Daily showers shall be offered of at least ten
20 minutes duration. Adequate supplies of hot water and shampoo
21 shall be provided. Students shall be allowed access to
22 personal hygiene items including towels, toothbrush, tooth-
23 paste, brush or comb, and soap.

24 iv. Students shall be allowed to wear clothing that
25 resembles as closely as possible clothing worn in other
26 cottages at MacLaren. This clothing shall be in good repair

1 and properly fitting, and shall not be of inappropriate
2 colors such as pink. Students shall not be required to
3 wear pajama-like clothing during day-time hours. Defendants
4 may prohibit clothing that contains metallic fittings with
5 which students may harm themselves.

6 v. Defendants shall offer students at least three
7 items per day of recreational reading material, and writing
8 materials, including paper, envelopes, and pencils or pens,
9 unless the student is actively destroying the above items,
10 or injuring himself with them.

11 c. Discipline in D-I.

12 i. Defendants shall not remove cell furnishings,
13 including mattresses and bedding, clothing, underwear and
14 socks, reading materials, or toilet paper from students,
15 unless the student is actively destroying the above items,
16 or injuring himself with them.

17 ii. Defendants shall not turn off the water in any
18 cell or prevent any toilet from flushing, unless the student
19 is actively flooding or throwing water out of his cell.
20 In such event, the water shall be turned back on at least
21 hourly to allow the student to wash, drink, or flush the
22 toilet.

23 iii. Defendants shall not deny students access to
24 meals in the D-I dining room.

25 iv. Defendants shall not deny students access to
26 exercise.

1 v. Defendants shall not block the window in the
2 D-I cell doors, except as permitted in paragraph (2)(a)(ii).

3 d. Use of Restraints.

4 i. Defendants shall not restrain students with hard
5 restraints, including but not limited to handcuffs and
6 leg shackles. Only soft restraints shall be used to restrain
7 students.

8 ii. Defendants shall not attach restraints to any
9 stationary objects including furniture, unless the student
10 attempts to and would otherwise injure himself even though
11 in restraints and such injuries cannot be physically pre-
12 vented by staff or the presence of staff would aggravate
13 the student's condition.

14 iii. Defendants shall not use restraints unnecessarily
15 or as a substitute for adequate programming and adequate
16 psychiatric services.

17 iv. Defendants shall not place students in restraints
18 without approval, either prior to or immediately thereafter,
19 and in no case more than 15 minutes thereafter, from a
20 qualified mental health professional who has certified
21 that no other means is available to prevent the student
22 from inflicting immediate and serious physical harm on
23 himself or others. However, for a period not to exceed
24 120 days from the date of this Final Judgment, such appro-
25 val may also be given by the superintendent or officer
26 of the day.

1 v. Defendants shall provide training for each staff
2 member authorized to apply restraints in how to apply
3 and release restraints without hurting the students. D-I
4 staff shall receive a minimum of 20 hours of training in
5 methods for calming down students who are restrained, and
6 alternative methods for dealing with violent or disturbed
7 students. Only trained staff shall be regularly assigned
8 to work in D-I.

9 vi. A staff person or qualified mental health profes-
10 sional shall stay with the student, preferably in the stu-
11 dent's cell or if necessary just outside the door, for
12 the entire time the student is restrained. However, for
13 a period not to exceed 120 days from the date of this
14 Final Judgment, defendants may substitute a five minute
15 watch by a staff person or qualified mental health profes-
16 sional.

17 vii. No student shall be placed in restraints for
18 longer than 30 minutes, unless the student would still
19 otherwise inflict immediate and serious physical harm on
20 himself or others and each additional 30 minute period
21 is authorized by a qualified mental health professional,
22 or, for a period not to exceed 120 days from the date
23 of this Final Judgment, the superintendent or officer of
24 the day. Any student who remains in restraints for more
25 than two hours shall be promptly transferred to a mental
26 health facility.

1 viii. Each student who has been restrained shall
2 be immediately checked by a medical technician, and shall
3 be evaluated, and, if necessary, treated by a qualified
4 mental health professional within 24 hours. However, for
5 a period not to exceed 120 days from the date of this
6 Final Judgment, this may be done within one working day.

7 ix. Defendants shall maintain a written log indicating
8 the name of the student restrained, the date, type and
9 duration of the restraint, and the name of the qualified
10 mental health professional, or, for a period not to exceed
11 120 days from the date of this Final Judgment, the superin-
12 tendent or officer of the day, who gave prior approval
13 for the restraint.

14 e. Exercise and Recreation.

15 i. Defendants shall offer students at least one
16 hour per day of large muscle activity, with at least half
17 of the time spent either outside, in a gymnasium, or in
18 a swimming pool.

19 ii. Defendants shall offer students at least two
20 hours on school days and three hours on non-school days
21 of planned recreational activities.

22 f. Education.

23 i. Defendants shall offer students, including students
24 studying for their G.E.D., and students who have already
25 received a high school diploma or G.E.D., a formal classroom
26 educational program. This educational program shall be

1 the equivalent in duration, subject matter, materials and
2 otherwise to that provided to students not confined in
3 D-1.

4 ii. Defendants shall offer students at least three
5 items per day of recreational reading material, and writing
6 materials, including paper, envelopes, and pencils or pens,
7 unless the student is actively destroying the above items,
8 or injuring himself with them.

9 iii. Provision of an educational program, educational
10 materials, recreational reading, and writing materials
11 shall not depend upon student request, but shall be offered
12 affirmatively to every student.

13 g. Food.

14 i. Defendants shall provide students with an adequate
15 and nutritious diet developed by a certified dietician.

16 ii. Defendants shall provide students with three
17 meals each day, plus a nutritionally balanced snack in
18 the evening, of sufficient quantity so that students are
19 not hungry during the evening, approved by a certified
20 dietician. Students will not be deprived of food for more
21 than 13 hours.

22 iii. Students shall not be served food of lesser quality
23 or in lesser quantity, including seconds and snacks, than
24 the food available to students not confined in D-1.

25 iv. The food served to students shall be appetizing,
26 at the appropriate temperature, and free of foreign objects.

1 Any food contaminated by foreign objects shall be replaced
2 before serving.

3 v. Defendants shall maintain all food preparation
4 areas in a clean and sanitary manner, and shall take all
5 necessary measures consistent with students' health and
6 safety to eliminate insect, rodent and pest infestation
7 in such areas, including an inspection by a licensed pest
8 control professional at least monthly.

9 h. Visitation.

10 i. Defendants shall encourage the involvement of
11 family and interested friends in students' rehabilitative
12 programs by encouraging visitation.

13 ii. Students shall be permitted to receive daily
14 visits from parents, other family members and friends for
15 at least one hour per day between the hours of 3:30 to
16 8:00 p.m. on school days and 1:00 p.m. to 8:00 p.m. on
17 non-school days. Students shall be permitted to decline
18 to receive visitors.

19 iii. Visits by parents, other family members and friends
20 may be denied or limited only when ordered by the committing
21 court, or when a qualified mental health professional,
22 or for a period not to exceed 120 days from the date of
23 this Final Judgment, the superintendent or officer of the
24 day, has certified in writing that such a restriction
25 is necessary because the visit would seriously disturb
26 the student's mental health, or the visitor violates rules

1 of the institution during the visit. Any such restriction
2 shall be reviewed at least monthly, and the student may
3 challenge the restriction of any visitor through the
4 grievance-appeal process.

5 iv. Reasonable limits may be placed on the number
6 of persons visiting a student at one time.

7 3. MEDICAL CARE

8 a. Health Evaluations and Sick Call.

9 i. Defendants shall evaluate the health of any student
10 who asks for medical attention, has been in a fight, has
11 had to be physically restrained by staff, or who appears
12 to be in need of medical attention.

13 a. This evaluation may be performed by a physi-
14 cian or registered nurse, or by a health technician
15 who has been carefully trained to detect students'
16 medical needs and who is carefully supervised by a
17 physician.

18 b. This evaluation shall be performed within
19 one hour of the request, incident or observation,
20 and will be provided to the superintendent, officer
21 of the day or qualified mental health professional
22 who reviews the placement pursuant to subsection (1)(d).

23 c. Students identified as in need of physical
24 or mental health care shall promptly receive appropriate
25 care.

26 ii. Defendants shall operate a sick call system that

1 ensures on an ongoing basis that each student with a health
2 problem is identified and receives needed health care.

3 a. Each student who informs staff of a health
4 need or asks to see medical staff shall be examined
5 or taken to a medical facility promptly and treated
6 by appropriately trained medical staff.

7 c. Within 120 days of the date of this Final
8 Judgment, a physician and a qualified mental health
9 professional shall be on site or on call 24 hours
10 a day, seven days a week.

11 b. Drug and Alcohol Withdrawal.

12 D-I staff shall be trained to recognize symptoms of
13 drug or alcohol withdrawal and will assure appropriate
14 treatment for students experiencing such withdrawal.

15 c. Medications.

16 i. D-I staff shall be provided with a list of
17 side-effects for any medications being used in D-I. D-I
18 lead shift supervisors, who provide non-injectable
19 medications to students under the supervision and direction
20 of qualified medical staff, shall be trained regarding
21 the use, purposes, expectations and side-effects of
22 medications. Other regularly assigned D-I staff shall
23 also be trained to recognize adverse side-effects of
24 medications.

25 ii. A physician or nurse shall examine the student
26 for the effectiveness and adverse side-effects of psycho-

1 tropic, stimulant and tranquilizing medication within one-
2 half hour after the medication is first administered intra-
3 muscularly, and within one hour if the medication is adminis-
4 tered orally, or the dosage is changed. Persons with such
5 qualifications shall make the same evaluation periodically
6 thereafter, and shall report the findings to the physician
7 who prescribed the medication.

8 iii. Students experiencing an adverse reaction to
9 medication shall be seen immediately by a physician, who
10 shall order any tests indicated and shall provide appropriate
11 care.

12 iv. A log shall be kept of all psychotropic, stimulant
13 and tranquilizing medications administered to students.

14 d. Mental Illness.

15 i. Defendants shall not admit to or confine in D-1
16 any student showing psychotic or other seriously disabling
17 psychiatric symptoms, except for a very brief period of
18 time, not to exceed four hours, necessary to transfer the
19 student to a mental health facility.

20 ii. During the entire brief period such a student
21 is confined in D-1, a staff person or qualified mental
22 health professional shall stay with the student, preferably
23 in the student's cell or if necessary just outside the
24 door.

25 e. Staff and Training.

26 i. Defendants shall employ sufficient numbers of

1 qualified mental health professionals so that students
2 who require mental health evaluations and individualized
3 mental health services shall receive them as indicated.

4 At a minimum, defendants shall, within 120 days of the date
5 of this Final Judgment, employ sufficient qualified mental
6 health professionals so that such a person is on site 24
7 hours a day, seven days a week, plus the equivalent of
8 one full-time psychologist and one half-time psychiatrist.

9 ii. Defendants shall provide D-1 staff and cottage
10 counselors with suitable training in meeting the needs
11 of students, including but not limited to recognizing mental
12 and emotional disturbances, use of medication (both expecta-
13 tions and side-effects), and working with unmotivated stu-
14 dents.

15 iii. Each student shall receive meaningful crisis-
16 oriented individual and/or group counseling.

17 a. The counseling program shall allow for inten-
18 sive individual and group sessions daily by a trained
19 counselor meeting the qualifications specified in
20 paragraph (e)(iii)(b).

21 b. The minimum qualifications for the person
22 providing the counseling are a masters degree in psycho-
23 logy, social work or counseling and two years of experi-
24 ence in working with juveniles, or five years of experi-
25 ence as a mental health specialist in the area of
26 working with juveniles.

1 c. The function of such counseling in D-I shall
2 be crisis-oriented. The counselors shall help the
3 students to understand the situation which resulted
4 in their placement in D-I, and shall assist in develop-
5 ment of coping mechanisms and relief of anxiety so
6 that the students can be released from D-I as soon
7 as possible.

8 4. MONITORING AND REPORTING.

9 a. Plaintiffs' counsel, Guardian Ad Litem, consultants
10 or employees may, for a period of two years from the date of
11 this Final Decree and Judgment, enter and inspect D-I to monitor
12 compliance with this Final Decree and Judgment at any time,
13 unless the timing or circumstances present an unreasonable secu-
14 rity risk.

15 b. On the first quarter occurring at least 30 days after
16 the date of this Final Decree and Judgment, defendants shall
17 provide the Court, plaintiffs' counsel and plaintiffs' Guardian
18 Ad Litem with a written report showing in detail defendants'
19 progress in implementing this Final Decree and Judgment.

20 c. Defendants shall report to the Court, plaintiffs'
21 counsel, and plaintiffs' Guardian Ad Litem, quarterly thereafter
22 for two years, as to:

23 i. the number of students placed in D-I, the purpose
24 and length of each placement, the person who gave approval
25 for the placement pursuant to paragraph (1)(d)(i), and
26 the date and time of each hearing provided pursuant to

1 paragraph (1)(d)(ii);

2 ii. the number of students restrained, the type and
3 duration of the restraint, and the qualified mental health
4 professional, or, for a period not to exceed 120 days
5 from the date of this Final Judgment, the superintendent
6 or officer of the day, who gave prior approval for the
7 restraint pursuant to paragraph (2)(d)(iv);

8 iii. the dates and findings of pest inspections obtained
9 pursuant to paragraphs (2)(a)(i) and (2)(g)(v);

10 iv. the dates, instructors and topics of staff training
11 provided pursuant to paragraphs (2)(d)(v), (3)(c)(i), and
12 (3)(e)(ii);

13 v. any denials or restrictions of visitation pursuant
14 to paragraph (2)(h)(iii);

15 vi. all psychotropic, stimulant and tranquilizing
16 medications administered to students; and

17 vii. the number of psychiatrists, psychologists, and
18 professionals with a masters degree in psychology, social
19 work or counseling, or five years of equivalent experience,
20 employed by defendants, and the number of hours employed
21 per week.

22 The Court having been informed by the parties that defendants
23 intend to seek additional resources from the state in order
24 to develop alternatives to isolation which would further reduce
25 the need for D-I and make it possible to limit placement there
26 to no more than 24 hours, some modifications of this Final Decree

1 and Judgment may become appropriate in the future, and the parties
2 are invited to approach the Court should that become the case.

3 It is further ORDERED, ADJUDGED AND DECREED that:

4 Plaintiffs are prevailing parties and are hereby granted
5 an extension of time of 60 days to file their petition for
6 attorneys' fees and 80 days to file their bill of costs.

7
8 DATED this 22 day of February, 1985.

9
10 James M. Burns
United States District Judge

11
12 Presented by:

13 Alan Baily
14 Alan Baily
Of Attorneys for Plaintiffs